

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1916

To reform certain statutes regarding civil asset forfeiture.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 1995

Mr. HYDE introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To reform certain statutes regarding civil asset forfeiture.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Civil Asset Forfeiture  
5       Reform Act”.

6       **SEC. 2. LIMITATION OF CUSTOMS AND TAX EXEMPTION**

7                       **UNDER THE TORT CLAIMS PROCEDURES.**

8       Section 2680(c) of title 28, United States Code, is  
9       amended—

1 (1) by striking “law-enforcement” and inserting  
2 “law enforcement”; and

3 (2) by inserting before the period the following:  
4 “, except that the provisions of this chapter and sec-  
5 tion 1346(b) of this title shall apply to any claim  
6 based on the negligent destruction, injury, or loss of  
7 goods or merchandise (including real property) while  
8 in the possession of any officer of customs or excise  
9 or any other law enforcement officer”.

10 **SEC. 3. LONGER PERIOD FOR FILING CLAIMS IN CERTAIN**  
11 **IN REM PROCEEDINGS.**

12 Paragraph (6) of Rule C of the Supplemental Rules  
13 for Certain Admiralty and Maritime Claims to the Federal  
14 Rules of Civil Procedure (28 U.S.C. Appendix) is amended  
15 by striking “10 days” and inserting “30 days”.

16 **SEC. 4. BURDEN OF PROOF IN FORFEITURE PROCEEDINGS.**

17 Section 615 of the Tariff Act of 1930 (19 U.S.C.  
18 1615) is amended to read as follows:

19 **“SEC. 615. BURDEN OF PROOF IN FORFEITURE PROCEED-**  
20 **INGS.**

21 “In—

22 “(1) all suits or actions (other than those aris-  
23 ing under section 592) brought for the forfeiture of  
24 any vessel, vehicle, aircraft, merchandise, or baggage

1 seized under the provisions of any law relating to the  
2 collection of duties on imports or tonnage; and

3 “(2) in all suits or actions brought for the re-  
4 covery of the value of any vessel, vehicle, aircraft,  
5 merchandise, or baggage, because of violation of any  
6 such law;

7 the burden of proof is on the United States Government  
8 to establish, by clear and convincing evidence, that the  
9 property was subject to forfeiture.”.

10 **SEC. 5. CLAIM AFTER SEIZURE.**

11 Section 608 of the Tariff Act of 1930 (19 U.S.C.  
12 1608) is amended to read as follows:

13 **“SEC. 608. SEIZURE; CLAIMS; REPRESENTATION.**

14 “(a) IN GENERAL.—Any person claiming such vessel,  
15 vehicle, aircraft, merchandise, or baggage may at any time  
16 within 30 days from the date of the first publication of  
17 the notice of seizure file with the appropriate customs offi-  
18 cer a claim stating his interest therein. Upon the filing  
19 of such claim, the customs officer shall transmit such  
20 claim, with a duplicate list and description of the articles  
21 seized, to the United States attorney for the district in  
22 which seizure was made, who shall proceed to a condemna-  
23 tion of the merchandise or other property in the manner  
24 prescribed by law.

1       “(b) COURT-APPOINTED REPRESENTATION.—If the  
 2 person filing a claim under subsection (a), or a claim re-  
 3 garding seized property under any other provision of law  
 4 that incorporates by reference the seizure, forfeiture, and  
 5 condemnation procedures of the customs laws, is finan-  
 6 cially unable to obtain representation of counsel, the court  
 7 may appoint appropriate counsel to represent that person  
 8 with respect to the claim. The court shall set the com-  
 9 pensation for that representation, which shall—

10               “(1) be equivalent to that provided for court-ap-  
 11 pointed representation under section 3006A of title  
 12 18, United States Code, and

13               “(2) be paid from the Justice Assets Forfeiture  
 14 Fund established under section 524 of title 28, Unit-  
 15 ed States Code.”.

16 **SEC. 6. RELEASE OF SEIZED PROPERTY FOR SUBSTANTIAL**  
 17 **HARDSHIP.**

18       Section 614 of the Tariff Act of 1930 (19 U.S.C.  
 19 1614) is amended—

20               (1) by inserting before the first word in the sec-  
 21 tion the following: “(a) RELEASE UPON PAY-  
 22 MENT.—”; and

23               (2) by adding at the end the following:

24       “(b) RELEASE OF SEIZED PROPERTY FOR SUBSTAN-  
 25 TIAL HARDSHIP.—

1           “(1) REQUEST FOR RELEASE.—A claimant is  
2           entitled to immediate release of seized property if  
3           continued possession by the United States Govern-  
4           ment would cause the claimant substantial hardship,  
5           such as preventing the functioning of a business,  
6           preventing an individual from working, or leaving an  
7           individual homeless. A claimant seeking release of  
8           property under this subsection must request posses-  
9           sion of the property from the appropriate customs  
10          officer, and the request must set forth the basis  
11          therefor. If within 10 days after the date of the re-  
12          quest the property has not been released, the claim-  
13          ant may file a complaint in any district court that  
14          would have jurisdiction of forfeiture proceedings re-  
15          lating to the property setting forth—

16                 “(A) the nature of the claim to the seized  
17                 property;

18                 “(B) the reason why the continued posses-  
19                 sion by the United States Government pending  
20                 the final disposition of forfeiture proceedings  
21                 will cause substantial hardship to the claimant;  
22                 and

23                 “(C) the steps the claimant has taken to  
24                 secure release of the property from the appro-  
25                 priate customs officer.

1           “(2) RETURN OF PROPERTY.—If a complaint is  
2       filed under paragraph (1), the district court shall  
3       order that the property be returned to the claimant,  
4       pending completion of proceedings by the United  
5       States Government to obtain forfeiture of the prop-  
6       erty, if the claimant shows that—

7           “(A) the claimant is likely to demonstrate  
8       a possessory interest in the seized property; and

9           “(B) continued possession by the United  
10       States Government of the seized property is  
11       likely to cause substantial hardship to the  
12       claimant.

13       The court may place such conditions on release of  
14       the property as it finds are appropriate to preserve  
15       the availability of the property or its equivalent for  
16       forfeiture.

17       “(3) TIME FOR DECISION.—The district court  
18       shall render a decision on a complaint filed under  
19       paragraph (2) no later than 30 days after the date  
20       of the filing, unless such 30-day limitation is ex-  
21       tended by consent of the parties or by the court for  
22       good cause shown.”.

23   **SEC. 7. JUSTICE ASSETS FORFEITURE FUND.**

24       Section 524(c) of title 28, United States Code, is  
25       amended—

1           (1) by striking out “law enforcement pur-  
2           poses—” in the matter preceding subparagraph (A)  
3           in paragraph (1) and inserting “purposes—”;

4           (2) by redesignating the final 3 subparagraphs  
5           in paragraph (1) as subparagraphs (I), (J), and (K),  
6           respectively;

7           (3) by inserting after subparagraph (G) of  
8           paragraph (1) the following new subparagraph:

9           “(H) payment of court-awarded compensation  
10          for representation of claimants pursuant to section  
11          608(b) of the Tariff Act of 1930;” and

12          (4) by striking out “(H)” in subparagraph (A)  
13          of paragraph (9) and inserting “(I)”.

14 **SEC. 8. CLARIFICATION REGARDING FORFEITURES UNDER**  
15 **THE CONTROLLED SUBSTANCES ACT.**

16          (a) IN GENERAL.—Section 511(a) of the Controlled  
17          Substances Act (21 U.S.C. 881(a)) is amended—

18               (1) in paragraph (4)(C), by striking “without  
19               the knowledge, consent, or willful blindness of the  
20               owner.” and inserting “either without the knowledge  
21               of that owner or without the consent of that owner.”

22               (2) in each of paragraphs (6) and (7), by strik-  
23               ing “without the knowledge or consent of that  
24               owner.” and inserting “either without the knowledge

1 of that owner or without the consent of that  
2 owner.”.

3 (b) SPECIAL RULE.—

4 (1) GENERALLY.—Section 511 of the Con-  
5 trolled Substances Act (21 U.S.C. 881) is amended  
6 by adding at the end the following:

7 “(l) For the purposes of this section, property shall  
8 not be considered to have been used for a proscribed use  
9 without the knowledge or without the consent of the owner  
10 of an interest in that property, if that owner was wilfully  
11 blind to, or has failed to take reasonable steps to prevent,  
12 the proscribed use.”.

13 (2) CONFORMING TECHNICAL AMENDMENT.—

14 The subsection (l) of section 511 that relates to an  
15 agreement between the Attorney General and the  
16 Postal Service is redesignated as subsection (k).

17 **SEC. 9. APPLICABILITY.**

18 The amendments made by this Act apply with respect  
19 to claims, suits, and actions filed on or after the date of  
20 the enactment of this Act.

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